

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JUSTIN JONES,

Plaintiff,

5:22-cv-1188 (BKS/ML)

v.

JOHN DOE #1 and JOHN DOE #2,

Defendants.

Appearances:

Plaintiff pro se:

Justin Jones
23-B-0068
Orleans Correctional Facility
3531 Gaines Basin Road
Albion, NY 14411

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff pro se Justin Jones filed this action under 42 U.S.C. § 1983 alleging that the defendants committed excessive force during an arrest of the Plaintiff on February 27, 2021. (Dkt. No. 1). This matter was referred to United States Magistrate Judge Miroslav Lovric who conducted an initial review of the sufficiency of the Complaint under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), and on March 6, 2023, issued a Report-Recommendation recommending that Plaintiff's Complaint be: (1) accepted for filing to the extent that it asserts claims under the Fourth Amendment for excessive force and failure to intervene against Defendants John Doe #1 and John Doe #2 in their individual capacities; and (2) dismissed without leave to replead to the extent that it asserts claims under 42 U.S.C. § 1983 against Defendants in their official capacity,

as barred by the Eleventh Amendment. (Dkt. No. 10). Plaintiff did not file an objection to the Report-Recommendation.

As no objection to the Report-Recommendation has been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is hereby

ORDERED that Magistrate Judge Lovric's Report-Recommendation (Dkt. No. 10) is **ADOPTED**; and it is further

ORDERED Plaintiff's Complaint (Dkt. No. 1) is **ACCEPTED** for filing to the extent that it asserts claims under the Fourth Amendment for excessive force and failure to intervene against Defendants John Doe #1 and John Doe #2 in their individual capacities, and **DISMISSED WITHOUT LEAVE TO REPLEAD** to the extent that it asserts claims under 42 U.S.C. § 1983 against Defendants in their official capacity as barred by the Eleventh Amendment; and it is further

ORDERED that the Court grants Plaintiff's Letter Motion (Dkt. No. 6) for an order directing the New York State Police and/or their attorney to provide assistance in identifying the John Doe Defendants so that Plaintiff can file an amended complaint; and it is further

ORDERED that pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d. Cir. 1997) (per curiam), the New York State Attorney General's Office is directed to take reasonable steps to attempt to identify and ascertain the full names of the Doe defendants and, to the extent that it is able to identify the Doe defendants, to provide the address where the Doe defendants can

currently be served. The Attorney General's Office is advised that it need not undertake to defend or indemnify the individuals at this juncture. The Court's directive is intended merely to provide a means by which Plaintiff may name and properly serve the defendants as instructed by the Second Circuit in *Valentin*. The New York State Attorney General's Office is requested to produce the information specified above regarding the identities of the Doe Defendants within thirty (30) days of the date of this Memorandum-Decision and Order, and it is further

ORDERED that upon receipt of a response from the New York State Attorney General's Office, the Clerk shall return this file to United States Magistrate Judge Miroslav Lovric for further review;

ORDERED that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: April 3, 2023
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge